Supreme Court, U.S.
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No. 08-715

In The
Supreme Court of the United States

JERRY W. DAVIS,
Petitioner,

v.

SIEMENS MEDICAL SOLUTIONS USA, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR THE PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

THE DEFENDANT'S REASONS FOR DENYING CERTIORARI ARE UNSOUND 1

I. THE LOWER COURTS HAVE BOTH MISAPPLIED AND MISSTATED KENTUCKY LAW 3

II. MR. DAVIS'S FEDERALISM ARGUMENT WAS SUFFICIENTLY PRESERVED IN THE LOWER COURT. 5

CONCLUSION 6

TABLE OF AUTHORITIES

CASES

Gonzales v. Raich,
545 U.S. 1 (U.S. 2005) 3

Gregory v. Ashcroft,
501 U.S. 452 (1991) 1

Hanson v. American Nat'l Bank & Trust Co.,
865 S.W.2d 302 (Ky. 1993) 3, 4, 6

Printz v. United States,
521 U.S. 898 (1997) 1

United States v. Mendenhall,
446 U.S. 544 (U.S. 1980) 5

United States v. Morrison,
529 U.S. 598 (2000) 1

UPS v. Rickert,
996 S.W.2d 464 (Ky. 1999) 3, 4, 6

Youakim v. Miller,
425 U.S. 231 (U.S. 1976) 5

STATUTES

KRS § 337.385 1

OTHER AUTHORITIES

The Federalist No. 45 (C. Rossiter ed. 1961) 3

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

THE DEFENDANT'S REASONS FOR DENYING CERTIORARI ARE UNSOUND

The lower courts' refusals in this case to apply the controlling laws of Kentucky are egregious violations of the our Country's constitutional system of Federalism. "This separation of the two spheres is one of the Constitution's structural protections of liberty. 'Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.'" Printz v. United States, 521 U.S. 898, 921 (1997) (quoting, Gregory v. Ashcroft, 501 U.S. 452, 458 (1991)). See also, United States v. Morrison, 529 U.S. 598, 655 (2000) (J. Breyer, dissenting in part) ("[n]o one denies the importance of the Constitution's federalist principles. Its state/federal division of authority protects liberty -- both by restricting the burdens that government can impose from a distance and by facilitating citizen participation in government that is closer to home.").

Among other things, the District Court and the Court of Appeals denied Mr. Davis the chance to have his Kentucky state wage and hour claim heard by a jury, as required by Kentucky Revised Statute

§ 337.385.[1] This denial was a violation of the United States Constitution's principle of Federalism as described by James Madison, and quoted by Justice Thomas:

> The powers delegated by the proposed constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. . . . The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

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[1] When the Petitioner appealed the District Court's incorrect holding to the Sixth Circuit Court of Appeals, the Respondent conceded in its briefing before the Sixth Circuit, and during the appellate oral argument, that the Petitioner was owed his full $35,000 guarantee rider, a substantial part of which Siemens still had not paid him. The Sixth Circuit panel then erroneously misstated in its opinion that, "[t]o the extent that Davis's statutory claim is based upon the failure of the defendant to pay the entire base salary promised in the company's guarantee rider, we are informed by counsel that the issue has been resolved out of court to the satisfaction of both parties." Davis v. Siemens Med. Solutions USA, Inc., 2008 U.S. App. LEXIS 11934, *5-6 (6th Cir. 2008). **To the contrary, counsel for the Petitioner never informed the panel of any resolution or satisfaction of any claim.** The Respondent never refuted this in its Opposition, or anywhere else. In fact, counsel for Respondent has admitted in correspondence of record that "[t]hese payments [were] being made unilaterally and unconditionally. Siemens [was] not requesting that Mr. Davis waive any claims that he may have against the Company in exchange for this payment." (App. 146a-147a).

Gonzales v. Raich, 545 U.S. 1, 57 (U.S. 2005) (J. Thomas, dissenting) (quoting, The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961)). When the lower courts granted Respondent's renewed judgment as a matter of law they also violated this fundamental principle, by failing to follow the law of Kentucky as stated by the Kentucky Supreme Court in Hanson v. American Nat'l Bank & Trust Co., 865 S.W.2d 302 (Ky. 1993). Hanson unequivocally held that no contract language is strong enough to protect a party from its own fraud. Cf. UPS v. Rickert, 996 S.W.2d 464, 471 (Ky. 1999).

The principle of Federalism embodied in the United States Constitution presents an issue of such compelling national concern and has been violated in such a manner by Federal Courts in the case at bar that, it is respectfully submitted, this Court should grant this Petition for Writ of Certiorari in order to enforce and reaffirm the important principle that binds the federal courts.

I. THE LOWER COURTS HAVE BOTH MISAPPLIED AND MISSTATED KENTUCKY LAW

The lower courts have *misstated* an important point of Kentucky law, and have not merely "misapplied" that point, as the Respondent contends. In its opinion below, the Sixth Circuit affirmed the district court's finding that even if Doug Spotts, the Siemens National Sales Manager, had made representations "concerning the payment of commissions . . . Davis could not have reasonably relied upon that promise, given the clear contract language to the contrary." Davis v. Siemens Med. Solutions USA, Inc., 2008 U.S. App. LEXIS

11934, *3-4 (6th Cir. 2008). The Sixth Circuit's affirmation of the District Court's statement that the contract language regarding Mr. Davis's commission prevented him, in effect, as a matter of law, from relying on the Siemens National Sales Manager's promises regarding those commissions, is a direct misstatement, not a mere misapplication, of the current law in Kentucky.

The Kentucky Supreme court in Hanson v. American Nat'l Bank & Trust Co., 865 S.W.2d 302 (Ky. 1993) held:

> The idea that any person or industry or enterprise would be immune from liability for fraud and deceit is not acceptable. . . The law should not, and does not permit a covenant of immunity to be drawn that will protect a person against his own fraud. Such is not enforceable because of public policy. Language is not strong enough to write such a contract. Fraud destroys all consent. It is the purpose of the law to shield only those whose armor embraces good faith.

Hanson, 865 S.W.2d at 309-310; Cf., UPS v. Rickert, 996 S.W.2d 464, 471 (Ky. 1999). This statement from the Kentucky Supreme Court is a correct statement of the law of fraud in Kentucky, which the lower courts failed to even acknowledge, let alone correctly apply.

The lower federal courts' failure to acknowledge or correctly apply controlling state law is an issue of national and Constitutional concern and is of sufficient significance to warrant a grant of a writ of certiorari.

II. MR. DAVIS'S FEDERALISM ARGUMENT WAS SUFFICIENTLY PRESERVED IN THE LOWER COURT.

The Respondent has erroneously claimed that the Petitioner failed to ever raise "any constitutional claims rooted in the principles of federalism at any time in this case." However, the Petitioner's challenge of the lower court's erroneous rulings on the Petitioner's state claims, and the lower federal courts' ignoring of controlling state law, necessarily raises the principle of Federalism which is being invoked.

When a federal court is sitting in diversity, Constitutional principles of Federalism dictate that the court respect the laws of the state courts and legislatures. In the case at bar the District Court and the Sixth Circuit Court of Appeals each failed to respect and properly apply the law of Kentucky, and, accordingly, the Petitioner has resisted those erroneous rulings through this petition process. The very core of the lower courts' erroneous rulings have violated the principle of Federalism and the Petitioner has properly brought those issues before this Court.

In United States v. Mendenhall, 446 U.S. 544 (U.S. 1980) this Court took up an issue not expressly raised below because an "assumption, embraced by the trial court and the Court of Appeals, rest[ed] on a serious misapprehension of federal constitutional law." United States v. Mendenhall, 446 U.S. 544, 552, n. 5 (U.S. 1980); see also, Youakim v. Miller, 425 U.S. 231, 234 (U.S. 1976). The same is true of the decisions in this case, that is, the district court and the Court of Appeals embraced an assumption which rested on a serious misapprehension of federal constitutional

law – that they need not follow controlling state law in a diversity case established by the highest court in the state, the Kentucky Supreme Court. Hanson v. American Nat'l Bank & Trust Co., 865 S.W.2d 302 (Ky. 1993); Cf., UPS v. Rickert, 996 S.W.2d 464, 471 (Ky. 1999).

CONCLUSION

For all of the above reasons, the Petitioner respectfully requests that this Court grant this Petition for Writ of Certiorari and affirm the Constitutional principle of Federalism, which demands that the Federal courts respect and follow the laws of the states in a diversity case.

Respectfully Submitted,

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